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IN THE

Supreme Court of the United States

October Term, 1966

No. 922

MATANUSKA VALLEY LINES, INC., a Corporation of the Territory of Alaska,

Petitioner,

vs.

FRANK H. MOLITOR.

Petition for Writ of Certiorari From the Judgment of the United States Court of Appeals for the Ninth Circuit.

BOYKO & SIMMONS,
EDGAR PAUL BOYKO,
LEONARD W. SCHROETER,
MICHAEL W. ROTBERG,
811 West Seventh Street,
Suite 910,
Los Angeles, Calif. 90017,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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Petition for Writ of Certiorari From the Judgment of the United States Court of Appeals for the Ninth Circuit.

To the Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, dated August 25, 1966, in case number 20509, as reported at 365 F. 2d 358, affirming the judgment in favor of Frank H. Molitor and against petitioner.

Statement of Jurisdiction.

Following entry of the above-mentioned judgment, a Petition for Rehearing, filed by petitioner, was denied by an order of the appellate court, dated September 29, 1966. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

Constitutional Provisions.

This case involves application of the due process clause of the Fifth Amendment and of the full faith and credit clause of Article IV, Section 1 of the United States Constitution. The Fifth Amendment provides in pertinent part:

> "No person shall be. . . . deprived of . . . property . . . without due process of law."

Article IV, Section 1 states in full:

> "Full faith and credit shall be given in each state for the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Questions Presented.

The vital questions here presented are whether, in a proceeding in federal court to enforce a federal judgment, a sister federal district court may apply, consistently with (1) the due process clause and (2) the full faith and credit clause, the statute of limitations of the forum state rather than the statute of limitations of the state of the federal court which rendered the judgment. These questions turn on construction of a federal statute, 28 U.S.C. §1963, enacted to allow a federal judgment creditor to enforce a judgment by registration thereof in a sister federal district court, without the necessity for a separate suit, in order to relieve both debtor and creditor from the burdens of further litiga-

tion. (See *Juneau Spruce Corp. v. I.L.W.U.*, 128 F. Supp. 697, 700 [D. Hawaii 1955].) Section 1963 states in pertinent part:

> "A judgment in an action for the recovery of money or property now or hereafter entered in any District Court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein the certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the District Court of the district where registered and may be enforced in like manner."

The question of construction which the appellate court decided was whether, under §1963, petitioner's judgment was registrable in a situation where the Alaska statute of limitations did not bar registration, but where the shorter Washington statute of limitations for enforcement of state judgments had run. It is petitioner's contention that in such instance only application of the Alaska statute will satisfy constitutional standards of due process and full faith and credit, as well as the purpose of §1963 to achieve certainty and uniformity in the enforcement of *federal* judgments.

By ruling otherwise, and by applying the Washington statute of limitations, the appellate court arbitrarily deprived petitioner of the opportunity to enforce its valid judgment in a sister federal court, in violation of petitioner's rights to due process of law and to full faith and credit for its judgment. It is submitted that the appellate court's opinion raises significant and un-

answered questions of federal procedure within the framework of those constitutional rights asserted herein by petitioner. The appellate court's application of the Washington statute of limitations to petitioner's federal judgment, in apparent disregard of the policy of §1963, together with the absence of any precedent establishing constitutional guidelines, require this Court to clarify whether such ruling is constitutionally permissible.

Statement of the Case.

On July 29, 1956 petitioner obtained in federal district court for the District of Alaska a default judgment, which became final, in the principal sum of $21,418.95 against Frank H. Molitor. On August 27, 1956 the judgment was registered in the District Court of Alaska. Pursuant to 28 U.S.C. §1963, on September 10, 1964 petitioner attempted to register the judgment in federal district court for the Western District of Washington. Thereafter, on June 11, 1965 petitioner instituted supplemental proceedings (filing of a motion and affidavit for examination of the judgment debtor) in the Western District Court of Washington to enforce the judgment against Molitor, then a resident of the state of Washington.

The district court judge ordered Molitor to appear for examination on June 21, 1965. Counsel for Molitor filed a motion and affidavit to quash the order for examination and to abate all further proceedings against Molitor. Following the submission of briefs and oral argument by both sides, the court granted Molitor's motion and on August 2, 1965 entered its order abating all further proceedings in the action.

Notice of appeal from the District Court's order was duly made to the Court of Appeals for the Ninth Circuit. Written briefs were filed and oral argument was heard, and on August 25, 1966 the appellate court affirmed the trial court's order of abatement. Petitioner seeks a writ of certiorari from this judgment.

Argument.

The Court of Appeals made the following ruling of law which petitioner contends is reviewable error and violates petitioner's constitutional rights to due process and to full faith and credit. The court ruled that petitioner's Alaska judgment was not registrable in the federal district court in Washington on the ground that the Washington six-year statute of limitations[1] for registration of foreign judgments or suits on foreign judgments was applicable to petitioner's proceeding to register a federal judgment, and barred registration because that statute had run. (365 F. 2d at 360.) The appellate opinion expressly declined to apply the Alaska ten-year statute of limitations, which provides that judgments and judgment liens obtained in the District Court for Alaska have an effective life of ten years,[2] although such statute had not run at the time of the attempted registration.

It is submitted that the Alaska statute is the *only* applicable statute of limitations in a proceeding for the registration of a federal judgment, because of the mandatory provision in §1963 that a federal judgment may be registered in any district court, and that such judgment "*shall have the same effect* as a judgment of

[1]Wash. Rev. Code 4.16.140 and 6.36.020.
[2]Title 9, Ch. 30, Alaska Stats. Anno. (1962).

the District Court of the district where registered *and may be enforced in like manner*". (Emphasis added.) There is no judicial or constitutional authority for the appellate court's ruling that the Washington statute of limitations for actions in Washington state courts has any application to a §1963 registration proceeding. Rather, to attribute any significance to §1963 as a remedial statute, *i.e.*, to give petitioner's Alaska judgment the same effect in another district court as it would have in the District Court of Alaska, the *only* applicable statute of limitations must be the Alaska statute.[3]

The cornerstone of the appellate opinion appears in its view that the conflict of laws principle in *Klaxon Co. v. Stentor Co.*, 313 U.S. 487 (1941), should be extended in its coverage to include, in addition to diversity cases, proceedings in which jurisdiction is based on §1963. The court indicated its belief that such extention will "preserve equal administration of justice in 'co-ordinate state and federal courts sitting side by side'". (365 F. 2d at 360.) Petitioner respectfully submits that the state-federal judicial relationship, together with the remedial purpose of §1963, gravely suffers by the theory that federal enforcement proceedings should be subjected to shorter statutes of limitation in jurisdictions where it may be necessary to seek satisfaction of personal judgments or to locate federal judgment debtors. This Court should review the constitutional implications of extending *Klaxon* to §1963 proceedings, for such extension negates the mandate of §1963 that

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[3]The sole exception to this rule would be when the forum's statute of limitations provides the same period of limitation as the statute of the state in which the judgment was rendered.

federal judgments which are registrable in the rendering court shall be registrable in any other federal district court.

Indeed, despite the necessary concern for a coordinate state and federal judiciary, the problems of overlapping jurisdiction can be minimized by giving §1963 the only constitutional interpretation of which it permits: §1963 should be construed as guaranteeing to federal judgment creditors an accessible federal forum in any jurisdiction in which it is necessary to seek enforcement of a personal judgment. To be meaningful and certain, such guarantee must be construed to carry with it a *single* statute of limitations, that of the state where the judgment was rendered. The contrary ruling of the appellate court herein not only renders the guaranties of §1963 as illusory, but inherently gives the statute a construction which arbitrarily deprives petitioner of the opportunity to enforce a valid and substantial judgment. Under such circumstances and unless certiorari is granted, petitioner's rights to due process and to full faith and credit will have been irreparably violated.

Conclusion.

For the reasons stated above, petitioner earnestly urges that a writ of certiorari be granted.

Dated: December 23, 1966.

Respectfully submitted,

BOYKO & SIMMONS,
EDGAR PAUL BOYKO,
LEONARD W. SCHROETER,
MICHAEL W. ROTBERG,
Attorneys for Petitioner.

APPENDIX.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals, for the Ninth Circuit.

Matanuska Valley Lines, Inc., a Corporation of the Territory of Alaska, Appellant, vs. Frank H. Molitor, Appellee. No. 20,509.

[August 25, 1966]

Appeal from the United States District Court for the Western District of Washington, Northern Division.

Before: Chambers, Hamley and Duniway, Circuit Judges.

Hamley, Circuit Judge:

On July 26, 1956, Matanuska Valley Lines, Inc. (Matanuska) obtained a default judgment in the sum of $21,418.95 against Frank H. Molitor in the United States District Court for the District of Alaska. Pursuant to 28 U.S.C. § 1963 (1964), Matanuska registered the judgment on September 10, 1964 in the United States District Court for the Western District of Washington. On June 11, 1965, the judgment creditor commenced supplemental proceedings on the registered judgment in the latter court. On motion of Molitor, that court entered an order abating the proceedings on the ground that enforcement of the registered judgment is barred by the Washington statute of limitations. Matanuska appeals. We affirm.

Under the laws of Alaska, the effective life and lien of a judgment obtained in Alaska is ten years. Title 9, Chap. 30, Alaska Statutes Annotated (1962). The

judgment obtained in Alaska by Matanuska was registered in the Washington district court, and the supplemental proceedings thereon were commenced, within this ten-year period. However, under Wash. Rev. Code 4.16.140 and 6.36.020, a foreign judgment is not enforceable in Washington, or registrable "in any court" of that state, after the expiration of six years following entry of the foreign judgment.

Title 28, § 1963, providing for the registration of district court judgments in other district courts contains no provision limiting the time within which such judgments may be registered. However, that section does provide that a judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.[1]

It has long been established that the enforcement of a judgment of a sister state may be barred by application of the statute of limitations of the forum state. *McElmoyle v. Cohen,* 38 U.S. 312, 327. Application of the forum's statute of limitations entails no violation of the full faith and credit clause of the Constitution since such statutes are deemed to affect procedure only and not the substance of the action. Any attempt by Matanuska to enforce its judgment in the Washington

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[1]See, also, Rule 69A, Federal Rules of Civil Procedure, which provides in pertinent part:

> "Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and proceedings on and in aid of execution shall be in accordance with the practice and procedure of the State in which the District Court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. . . ."

state courts after the lapse of six years would have been fruitless despite the "liveness" of the judgment according to the Alaska statutes. Should a different result obtain because enforcement of a judgment registered under section 1963 is sought in the district court sitting in Washington? We think not.

In those cases where jurisdiction is founded upon diversity of citizenship, the district courts are to apply the substantive law of the forum state (*Erie R. Co. v. Tompkins,* 304 U.S. 64); including the forum states conflict of laws rules (*Klaxon Co. v. Stentor Co.,* 313 U.S. 487). Application of the *Klaxon* doctrine in this case results in the use of the Washington statutes which expressly limit actions on foreign judgments or registration of foreign judgments to six years.

It could be argued that *Klaxon* is inapplicable in the present case because jurisdiction is based on 28 U.S.C. § 1963 rather than diversity of citizenship. However, we are of the view that a departure from the *Klaxon* principles would be justified only if Congress, in enacting the registration statute, had expressed its will with regard to the applicable law. See *Richards v. United States,* 369 U.S. 1, 7. Section 1963 gives no indication that Congress intended that the statute of limitations of the state of registration should be ignored; nor is there any such indication in the act's legislative history. 1954 U.S. Code Cong. and Adm. News, p. 3142.

The Supreme Court in *Klaxon Co. v. Stentor Co.* was guided by a desire to preserve equal administration of justice in "co-ordinate state and federal courts sitting side by side." We think that this principle is equally applicable in registration proceedings under 28

U.S.C. § 1963 and hold that the district court correctly applied the statute of limitations of the forum state to determine the validity of the proceedings on the Alaska judgment.

Mention should be made of *Stanford v. Utley,* 8 Cir., 341 F.2d 265, a recent appellate decision construing the federal registration of judgments statute. The plaintiff in *Stanford* obtained a judgment in a Mississippi district court; this judgment was registered the next day in a Missouri district court. Seven and one-half years later the plaintiff sought to take defendant's deposition to discover assets, but the notice to take the deposition was quashed by the district court on the ground that proceedings on the judgment were barred by the laws of Mississippi after a lapse of seven years. On appeal the district court was reversed; the appellate court held that registration of the judgment, so far as enforcement was concerned, was the equivalent of a new judgment of the registration court. Since the registered judgment was viewed as a new Missouri judgment, the Missouri statute allowing ten years for the enforcement of judgments was held applicable.

Both parties in the instant case cite *Stanford* as supporting their respective arguments. But an important factual distinction prevents that case from being considered authoritative here. In *Stanford,* the judgment was registered pursuant to 28 U.S.C. § 1963 at a time when it was live and registrable according to the law of either Mississippi or Missouri. The registrability of

the judgment was not disputed; the holding of the eighth circuit court relates to the effect of valid registration upon subsequent enforcement proceedings. The question presented to us is whether Matanuska's Alaska judgment is registrable; the Washington laws, which we hold are applicable, say that it is not.

Matanuska cites *Juneau Spruce Corporation v. I.L.W.U.*, D.C. Haw., 128 F.Supp. 697, and *Juneau Spruce Corporation v. I.L.W.U.*, N.D. Cal., 128 F. Supp. 715, in support of its position. These opinions contain statements to the effect that a judgment to be registrable must be valid and alive in the jurisdiction of origin. These statements are responsive to the issue there involved—whether the judgment was incapable of registration due to the limitation statutes of the rendering state. In our case we have the different issue of whether the judgment was incapable of registration due to the limitation statutes of the registration state. On this issue the *Juneau* decisions are not in point.

Affirmed.

[Letterhead]

Edgar Paul Boyko, Esq.
811 West Seventh Street
Los Angeles, California

Received: Sep. 30, 1966.

Dear Sir:

The Petition for a Rehearing heretofore filed in case No. 20509—Matanuska Valley Lines, Inc., v. Elizabeth Molitor, Executor for F. H. Molitor was this day denied.

Pursuant to Rule 26, and unless stayed by the order of the Court, a mandate of this Court under said Rule will be due to issue on the expiration of five (5) days from the date hereof.

Time for certiorari petition, Civil cases: 90 days, Criminal cases: 30 days.

Sincerely,

Wm. B. Luck,
Clerk